STATE OF MICHIGAN

COURT OF APPEALS

PYTHAGOREAN, INC,

Plaintiff-Appellant,

v

GRAND RAPIDS TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED
September 22, 2005

No. 254369
Kent Circuit Court
LC No. 98-05394-AW

Before: Smolenski, P.J., and Murphy and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from a lower court order granting defendant's motion for dismissal/directed verdict at the conclusion of plaintiff's case at a bench trial. We affirm.

This is not the first time this matter has come before us. We explained the underlying facts in an earlier appeal as follows:

> In 1995, plaintiff filed an application with defendant to rezone plaintiff's property from an R-1 (single-family residential) to a C-1 (suburban neighborhood commercial) zoning classification. Plaintiff sought the rezoning so that it could construct a combination of offices and retail space on the property. Following a public hearing, defendant's planning commission voted to recommend that defendant's board deny the application, which the board did on October 24, 1995.
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> In 1996, plaintiff filed another application requesting that the property be rezoned to a planned unit development classification that would allow neighborhood commercial uses. [Randall Kraker] [c]ounsel for defendant advised that office use had been designated for the property by the master plan since 1990 and that, therefore, defending continued zoning restrictions allowing only single-family residential use would be difficult. On its own initiative, the planning commission scheduled a hearing on a proposal to rezone the property to a C-2 (suburban office use) classification and, on May 27, 1997, the commission adopted that proposal. On July 1, 1997, defendant's board adopted the planning commission's recommendation to rezone plaintiff's property from R-1 to C-2.
>
> Plaintiff thereafter brought suit against defendant, alleging that the board had "arbitrarily, capriciously, and without substantial or material basis" denied

plaintiff's application to use the property for commercial purposes. Plaintiff also sought compensation for inverse condemnation. *Pythagorean, Inc v Grand Rapids Twp,* 253 Mich App 525, 526-527; 656 NW2d 212 (2002).

The prior appeal pertained to a discovery dispute. On remand and at trial, plaintiff argued that defendant's 1997 rezoning of the property from R-1 to C-2 was done in bad faith to manufacture a defense to the litigation, so defendant should be estopped from asserting that the property is zoned C-2 for the purposes of plaintiff's inverse condemnation claim. However, the trial court found that plaintiff failed to establish that defendant had rezoned the property C-2 for the sole purpose of manufacturing a defense to this action, so the C-2 classification was applicable. The trial court concluded that the evidence tending to show bad faith also established a valid reason for the rezoning: to bring the zoning of plaintiff's property into conformity with the 1990 Master Plan. The trial court noted that the property would be more valuable zoned C-1, but because it nevertheless had substantial value zoned C-2, the classification did not deprive plaintiff of all economically beneficial use of the property.

Plaintiff argues only that the trial court erred in applying the C-2 zoning classification instead of the R-1 zoning classification to its inverse condemnation claim. We disagree.

We review a trial court's decision to admit evidence of a zoning ordinance amendment for an abuse of discretion. *Landon Holdings, Inc v Grattan Twp,* 257 Mich App 154, 161; 677 NW2d 93 (2003). The trial court should apply the version of the ordinance effective at the time it renders its decision, with two exceptions: where doing so would destroy a property interest that vested before the amendment or where "'the amendment was enacted for the purpose of manufacturing a defense to plaintiff's suit.'" *Id.*, quoting *Rodney Lockwood & Co v City of Southfield*, 93 Mich App 206, 211; 286 NW2d 87 (1979) (citing *Keating Int'l Corp v Orion Co*, 395 Mich 539, 548-549; 236 NW2d 409 (1975)).

Plaintiff argues that the Kraker letter and the discussion at the May 27, 1997 planning commission establish that defendant rezoned the property to C-2 to improve its position during litigation, and bringing the property into conformance with the Master Plan was merely pretext. However, the trial court correctly noted that although Kraker's letter acknowledged the threat of litigation, it strongly recommended that the property be rezoned C-2 on the basis of the Master Plan's recommendation that the property be zoned for office use. Thus, Kraker's recommendation was in part to allow defendant the opportunity to implement its Master Plan. Certain planning commission members mentioned the litigation in discussing the rezoning of the property. However, the planning commission considered other good faith reasons for rezoning the property to C-2, including the desire of the public not to have commercial uses on the property, the recommendation of the Master Plan that the property be zoned for office use, traffic issues, the impact of office versus commercial use, and the lack of a need for additional commercial uses in the area. The planning commission considered the merits of the proposal for rezoning the property to C-2 as compared with the merits of plaintiff's request for rezoning to NC-PUD, and ultimately four commissioners preferred the C-2 classification, while three commissioners preferred the NC-PUD.

To establish bad faith, plaintiff was required to show that the rezoning was undertaken for *the* purpose of manufacturing a defense to the lawsuit. However, the trial court correctly found that improving defendant's position in this action was merely *a* reason for the rezoning.

The same evidence also establishes additional, legitimate reasons for rezoning the property to C-2.

Because the "bad faith exception" does not apply, and there is no argument that plaintiff had a pre-existing vested property interest that was destroyed by the amendment, the trial court properly applied the C-2 zoning classification to plaintiff's claims.

Affirmed.

/s/ Michael S. Smolenski
/s/ William B. Murphy
/s/ Alton T. Davis